1947. File No. O Trade Union 47

Legal DEPARTMENT
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Subject:—

Opinions under the Indian Trade Union Act, 1926.

P 6E

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Office of the R.L.A.

It appears that the Registrar of Trade Unions for the Province of Bombay has received applications from the Unions of Teachers, Municipal employees and Government employees etc. for registration under the Indian Trade Unions Act, 1926. The Registrar of Trade Unions considers that these embyees are not workmen within the meaning of clause (g) of section 2 of the Indian Trade Unions Act, 1926, and consequently the Unions not beingtrade unions within ghe meaning of clause (h) are not entitled to be registered under section 8 of the Act. He, however, considers the point doubtful in view of the fact that in England where the definitions of "trade Union" and "workmen" are similar to the definitions in the Indian Trade Unions Act, the unions of the type now under consideration have been registered under the Act by the Chief Registrar of Friendly Societies. The R.L.A. is requested to advise whether these Unions can be registered under the Indian Trade Unions Act, 1926.

2. It is true that the definition of "trade dispute" in clause (g) and the definition of "trade union" in clause (h) of section 2 of the Indian Trade Unions Act, 1926, have been taken from section 5 of the Trade Disputes Act, 1906, and section 23 of the British Trade Unions Act, 1871, respectively: (see the Statement of objects and Reasons of the Indian Trade Unions Act, 1926, at p.8 of the Government of India Gazette Part V dated 24th January 1925). By section 5(3) of the Trade Disputes Act, 1906 which is to be construed as one with the Trade Unions Act, 1871, the expression "workmen" is defined inter alia as "any persons employed in trade or industry". Similarly the term "workmen" is defined in clause (g) of section 2 of the Indian Trade Unions Act as meaning "all persons employed in trade or industry whether

Or not in the employment of the employer with whom the trade dispute arises" and "trade union" as defined in clause (h) means "any combination whether temporary or permanent formed promarily for the purpose of regulating the relations between workmen and employers, or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions". It is, therefore, apparent that for the purpose of determining whether any combination is a trade union within the meaning of clause (h), it would be essential to consider whether the employees who have formed such combination are employed in trade or industry. Government employees cannot be considered workmen employed in trade or industry nor would it be possible to say that the municipal employees are employed in trade or industry. Consequently the unions of Government employees and municipal employees could not be trade unions within the meaning of clause (h) of section 2. The question of teachers appears to stand on a different footing. For deciding whether any association comes within the definition of "trade Union", its objects and its rules must be read as a whole; see Chamberlin's Wharf Ltd. v. Smith (1900) 2 Chan. 605. In Brinelow v. Casson (1924) Chan. Division 302, Rushell J. at p. 31 observed:

> "It is argued that the case of actors was not within the section at all because by the definition section the words 'trade dispute' means a dispute in which workmen are concerned i.e. persons employed in trade or industry and that acting is neither a trade nor an industry. This appears to me a narrow view of the section. There is no definition of 'trade'

present case are entitled to be registered under the Indian Trade Unions Act.

D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to P. and S.D., No.8195, dated the 9th August, 1947.

S.I./10/5/56. 4c.

or 'industry' in the Act but it seems to me that the business of presenting histrionic performances to the public for profit may fairly be described as a trade or industry in which many persons including actors are employed

In view of these observations and in view of the absence of the definition of "trade" in the Indian Trade Unions Act, the Registrar of Trade Unions may scrutinize the aims and objects of the Teachers' Unions and decide whether their profession can be considered a trade.

3. In para.3. of the office of the Registrar of Trade Unions' note at p.1 ante, it is stated that "in England where the definition of 'trade union' and 'workmen' is similar to the definition in the Indian Trade Unions Act, Unions of the type mentioned in the list have been registered under the Act by the Chief Registrar of Friendly Societies as will be seen from the report placed below". The said report has not been forwarded to L.D. Section 5 of the Trade Unions Act, 1871, provides: "The following Acts i.e. to say (1) the Friendly Societies Acts, 1855 and 1858 and the Acts amending the same (2) the Industrial and provident Societies Act, 1876 and any Act amending the same and (3) the Companies Acts 1862 and 1867 shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade unions made under the Friendly Societies Acts, 1855 and 1858 and the Acts amending the same before the passing of the Act shall cease to be of any effect." It is apparent from this provision that the fact that these unions are registered under the Friendly Societies Acts clearly proves that they are not trade unions. Consequently the argument advanced by the office of the Registrar of ~~the~~ Trade Unions does not support the view that the unions in the

Office of the R.L.A.

Registration of Unions of Municipal and Government employees.

Trade Unions Act, 1926.

The Select Committee on the Bill No.XVIII of 1947 to amend the Indian Trade Unions Act, 1926 has recommended the inclusion of the definitions of the terms "employer" and "industry" in section 2. If their recommendation is accepted and the Bill passed into law there would be no legal objection to registering Unions such as those of the Bombay Government employees and Municipal employees. Consequently the registration of such unions need not be cancelled provided there are prospects of the Bill being passed at an early date.

P.N.Lal
8/12

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.11830, dated the 9th December '47.

S.I./ 10/5/56. 4c.